

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

KAMEYLA MEDINA, a minor,  
by her Mother and next friend,  
AUDREY ESTRADA,

Plaintiffs,

v.

ENDORSED  
FILED IN MY OFFICE THIS

SEP 16 2010

*Quinton M. Duran*  
CLERK DISTRICT COURT

DEPAG-0928

CV 2010 11025

Case No.: CV 2010 11025

THE ALBUQUERQUE PUBLIC SCHOOLS  
BOARD OF EDUCATION, individual members,  
in their official capacities,

WINSTON BROOKS, Superintendent of Albuquerque  
Public Schools, individually and in his official capacity,

MS. RENEE SALAZAR-GARCIA,  
Principal of John Adams Middle School,  
individually and in her official capacity,

MR. RAFAEL ESPARZA,  
Vice-Principal of John Adams Middle School,  
individually and in his official capacity,

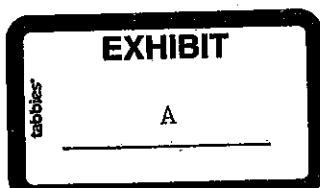
MS. JODEE SCHOLZ,  
Eighth Grade Academy Director of John Adams Middle School,  
individually and in her official capacity,

MR. KARL SCHALLER,  
Eighth Grade Teacher at John Adams Middle School,  
individually and in her official capacity,

AMANDA DIMAS, individually and  
as guardian of minor LORENA DIMAS.  
Defendants.

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND TO RECOVER DAMAGES

COMES NOW, the Plaintiffs, Kamelya Medina, a minor, by her mother and next friend,  
Audrey Estrada, by and through counsel of record, Assed & Associates (Ahmad Assed, Esq., and



John C. Young, Esq.), and for their *Complaint for Violation of Civil Rights and to Recover Damages* offers the following:

1. This action is brought to secure the protection and to redress the deprivation of rights secured by the Fourteenth Amendment of the United States Constitution and 42 USCA § 1983 and for the redress of torts under the laws of the State of New Mexico. The jurisdiction of this Court is invoked to secure declaratory and injunctive relief for the violation of civil rights, and for compensatory and punitive damages.

**Parties and Jurisdiction**

2. At all times material hereto, Plaintiff Kameyla Medina (herein "Plaintiff") was a student at John Adams Middle School in the City of Albuquerque, State of New Mexico.
3. Defendant Albuquerque Public Schools Board of Education (herein "Defendant Board of Education") is a public body organized under the laws of the State of New Mexico charged with operating the Albuquerque Public Schools. The individual members of the Board of Education, named inclusively, are public officials elected by the voters of Bernalillo County, New Mexico and are charged with the creation and implementation of policy for the Albuquerque Public Schools.
4. Defendant Mr. Winston Brooks (herein "Defendant Brooks") is the Superintendent of the Albuquerque Public Schools Board of Education serving at the discretion of the Board of Education. Defendant Brooks is charged with the creation and implementation of policy for the Albuquerque Public Schools.
5. John Adams Middle School is operated by the Albuquerque Public Schools Board of Education. John Adams Middle School, via its administrators and educators, operates at

the discretion and with the informed consent of the Albuquerque Public Schools Board of Education and the Superintendent of Albuquerque Public Schools.

6. Defendant Ms. Renee Salazar-Garcia (herein "Defendant Salazar-Garcia"), at all relevant times, was an employee of APS serving as Principal of John Adams Middle School.
7. Defendant Mr. Rafael Esparza (herein "Defendant Esparza"), at all relevant times, was an employee of APS serving as Vice-Principal of John Adams Middle School.
8. Defendant Ms. Jodee Scholz (herein "Defendant Scholz"), at all relevant times, was an employee of APS serving as Eighth Grade Academy Director of John Adams Middle School.
9. Defendant Mr. Karl Schaller (herein "Defendant Schaller"), at all relevant times, was an employee of APS as a teacher at John Adams Middle School.
10. Upon information and belief, individual Defendants Amanda Dimas (a minor) and Lorena Dimas, her mother, are residents of the County of Bernalillo, State of New Mexico.
11. The events giving rise to the damages alleged herein occurred in Bernalillo County, New Mexico making jurisdiction and venue proper pursuant to N.M. Stat. Ann. § 38-3-1 (1978), *et seq.*

General Allegations

12. In the academic year 2007-2008, the Plaintiff was enrolled in the eighth (8<sup>th</sup>) grade at John Adams Middle School, a division of the Albuquerque Public School System.
13. Beginning early in that academic year, the Plaintiff was harassed and physically threatened by fellow student, Defendant Lorena Dimas. Upon learning of this, the Plaintiff's mother, Ms. Audrey Estrada, informed administrators at John Adams Middle

School of the danger to her daughter and requested that steps be taken to insure her safety.

14. On September 9<sup>th</sup>, 2007, Ms. Estrada contacted Ms. JoDee Scholz, Eighth Grade Academy Director at John Adams Middle School, in an attempt to stop the harassment and threats against her daughter. Ms. Estrada was advised that she should instead contact the office of the Principal, Renee Salazar-Garcia. Ms. Estrada made several phone calls to the Principal's office, yet none of her calls were returned.
15. On September 27<sup>th</sup>, 2007, Ms. Estrada, again, contacted Defendant Scholz in an attempt to stop the harassment and threats against her daughter. However, Ms. Estrada's phone calls were not returned and no steps were taken to insure her daughter's physical safety.
16. On or about October 4, 2007, Lorena Dimas and her mother, Amanda Dimas, entered John Adams Middle School through its front entrance. The two then went through the building to Mr. Schaller's classroom where they found the Plaintiff seated at her desk. The two then entered the classroom where Defendant Lorena Dimas began to viciously attack the Plaintiff.
17. While Defendant Lorena Dimas was violently punching, kicking, and violently pulling the Plaintiff's hair, Defendant Amanda Dimas, shouted racial slurs and encouraged Lorena to strike Kamelya more forcefully. The teacher in the classroom, Mr. Schaller, initially failed to intervene or diffuse the altercation, and instead asked Defendant Amanda Dimas to stop Defendant Lorena Dimas from battering the Plaintiff.
18. After over one minute of fighting, Defendant Schaller finally pulled Defendant Lorena Dimas away from the Plaintiff before school security guards entered the classroom. After

the altercation, they were escorted outside of the classroom where Defendants Amanda and Lorena Dimas continued to antagonize and shout racial slurs at the Plaintiff.

19. Defendants Albuquerque Public Schools Board of Education (inclusive), Superintendent Winston Brooks, and the above-named employees of John Adams Middle School, in failing to respond to a known threat to the health and safety of the Plaintiff, have acted with reckless disregard for the Plaintiff, and in doing so have created a policy or custom which has resulted in damage to the Plaintiff. As a result, the Defendants have violated the Plaintiff's civil rights as protected by the Fourteenth Amendment of the United States Constitution.
20. Defendants Albuquerque Public Schools Board of Education (inclusive), Superintendent Winston Brooks, and the above-named employees of John Adams Middle School, in failing to train its employees to respond to a known threat to the health and safety of the Plaintiff, or others similarly situated, have demonstrated a deliberate indifference towards the health and safety of the Plaintiff, and others similarly situated, which has resulted in damage to the Plaintiff. As a result, the Defendants have violated the Plaintiff's civil rights as protected by the Fourteenth Amendment of the United States Constitution.
21. Defendants Amanda and Lorena Dimas, have acted to intentionally and maliciously harm the Plaintiff, and in doing so, have caused the Plaintiff to suffer harm contrary to the laws of the State of New Mexico. As a result, the Plaintiff has been damaged and deserves compensation for such.

Violation of Plaintiff's Civil Rights  
Count I: 42 U.S.C.A. § 1983

22. The Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1-21.

23. The Defendants, Albuquerque Public Schools Board of Education (inclusive), Albuquerque Public Schools Superintendent Winston Brooks, and the above-listed employees at John Adams Middle School, in their official capacities, acting under color of State law, have violated the Plaintiff's civil rights by:

- a. Creating, or substantially contributing to the creation of, a danger;
- b. To which the Plaintiff was specifically at risk;
- c. Exposing the Plaintiff to a substantial risk of immediate and proximate harm;
- d. Despite the Defendants' knowledge of the danger;
- e. Acting with reckless and conscious disregard of the danger; and
- f. The Defendants' actions were shocking to the conscience.

24. In doing so, the Defendants have created a policy or custom which has resulted in a violation of the Plaintiff's civil rights as protected by the Fourteenth Amendment of the United States Constitution. Therefore, the Plaintiff is entitled to pursue remedies under 42 U.S.C.A. § 1983 including declaratory and injunctive relief.

**Count II: 42 U.S.C.A. § 1983**

25. The Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1-24.

26. The Defendants, Albuquerque Public Schools Board of Education (inclusive), Albuquerque Public Schools Superintendent Winston Brooks, and the above-listed employees at John Adams Middle School, in their official capacities, acting under color of State law, have violated the Plaintiff's civil rights by:

- a. Failing to train its employees to respond to a known threat to the health and safety of the Plaintiff, or others similarly situated;

- b. In a situation which is usual and reoccurring which employees of a public school must deal with regularly;
- c. The inadequate training for which demonstrates a deliberate indifference on the part of the school system;
- d. Resulting in a constitutional deprivation to the Plaintiff.

27. In doing so, the Defendants have created a policy or custom which has resulted in a violation of the Plaintiff's civil rights as protected by the Fourteenth Amendment of the United States Constitution. Therefore, the Plaintiff is entitled to pursue remedies under 42 U.S.C.A. § 1983 including declaratory and injunctive relief.

**Plaintiff's Complaint for Damages against Defendants Lorena and Amanda Dimas**  
**Count III: Battery**

28. The Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1-27.

29. The Plaintiff alleges that the above-named individual Defendants, Amanda Dimas and Lorena Dimas have unlawfully battered the Plaintiff by:

- a. Touching the Plaintiff;
- b. In an angry, rude, or insolent manner;
- c. Without the consent of the Plaintiff;
- d. Resulting in severe harm to the Plaintiff.

30. As a result of the above-named individual Defendants' actions, the Plaintiff has suffered and continues to suffer pain and suffering of both a mental and physical nature; suffered and continues to suffer mental anguish and emotional distress; suffered and continues to suffer loss of enjoyment of life; has incurred and continues to incur medical and future medical expenses; and has incurred a permanent injury.

**Count IV: Assault**

31. The Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1-30.
32. The Plaintiff alleges that the above-named individual Defendants, Amanda Dimas and Lorena Dimas have unlawfully assaulted the Plaintiff by:
  - a. Putting the Plaintiff in fear of an imminent battery;
  - b. Resulting in severe harm to the Plaintiff.
33. As a result of the above-named individual Defendants' actions, the Plaintiff has suffered and continues to suffer pain and suffering of both a mental and physical nature; suffered and continues to suffer mental anguish and emotional distress; suffered and continues to suffer loss of enjoyment of life; has incurred and continues to incur medical and future medical expenses; and has incurred a permanent injury.

**Count V: Intentional Infliction of Emotional Distress**

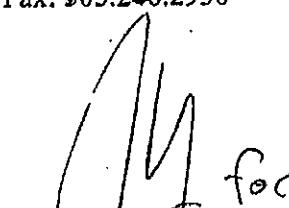
34. The Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1-33.
35. The Plaintiff alleges that the above-named individual Defendants, Amanda Dimas and Lorena Dimas have unlawfully battered the Plaintiff by:
  - a. Acting in an extreme and outrageous manner,
  - b. With the intent of recklessly causing severe emotion distress to the Plaintiff,
  - c. Resulting in severe and emotion bodily harm to the Plaintiff.
36. As a result of the above-named individual Defendants' actions, the Plaintiff has suffered and continues to suffer pain and suffering of both a mental and physical nature; suffered and continues to suffer mental anguish and emotional distress; suffered and continues to suffer loss of enjoyment of life; has incurred and continues to incur medical and future medical expenses; and has incurred a permanent injury.

WHEREFORE, based upon the foregoing, the Plaintiff prays that this Court enter declaratory judgment in her favor against Defendants Albuquerque Public Schools Board of Education (inclusive), Superintendent of the Albuquerque Public Schools Winston Brooks, Principal of John Adams Middle School Ms. Renee Salazar-Garcia, Vice-Principal of John Adams Middle School Mr. Rafael Esparza, John Adams Middle School Eighth Grade Academy Director Ms. JoDee Scholz, John Adams Eighth Grade Teacher Mr. Karl Schaller, and enjoin the Defendants from their unlawful practices, and award the Plaintiff her costs and reasonable attorneys' fees, and to award compensatory and punitive damages against Amanda Dimas (a minor) and her mother Lorena Dimas, in an amount to be proven at trial, and for any such further relief that this Court deems necessary and just.

Respectfully Submitted,  
Assed & Associates



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Albuquerque, NM 87102  
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MR. KARL SCHALLER,  
Eighth Grade English Teacher at John Adams Middle School,  
individually and in his official capacity,

AMANDA DIMAS, individually and  
as guardian of minor LORENA DIMAS.  
Defendants.

SUMMONS

TO: Albuquerque Public Schools  
Board of Education  
P.O. Box 25704  
Albuquerque, NM 87125

GREETINGS:

You are hereby directed to serve a pleading or motion in response to the complaint within thirty (30) days after service of this summons, and file the same, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the Plaintiff will apply to the court for the relief demanded in the complaint.

Attorney for Plaintiff: Ahmad Assed & Associates  
Ahmad Assed, Esq.  
John C. Young, Esq.  
Address of Attorney for Plaintiff: 818 Fifth Street NW  
Albuquerque, NM 87102

WITNESS the Honorable \_\_\_\_\_, District Judge  
of the Second Judicial District Court of the State of New Mexico, and the Seal of the District  
Court of Bernalillo County, this \_\_\_\_\_ (date).

By \_\_\_\_\_  
Deputy

**RETURN**

STATE OF NEW MEXICO )  
)  
COUNTY OF \_\_\_\_\_ )  
ss.

I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summons in said County on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by delivering a copy thereof, with copy of complaint attached, in the following manner:

*(check one box and fill in appropriate blanks)*

to Defendant \_\_\_\_\_ (used when Defendant receives copy of Summons or refuses to receive Summons)

to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of Defendant \_\_\_\_\_, who at the time of such service was absent therefrom.

by posting a copy of the Summons and Complaint in the most public part of the premises of Defendant \_\_\_\_\_ (used if no person found at dwelling house or usual place of abode)

to \_\_\_\_\_, an agent authorized to receive service of process for Defendant \_\_\_\_\_.

to \_\_\_\_\_, (parent) (guardian) of Defendant \_\_\_\_\_ (used when Defendant is a minor or an incompetent person)

to \_\_\_\_\_ (name of person), \_\_\_\_\_ (title of person authorized to receive service) (used when Defendant is corporation or association subject to suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision)

Fees:

\_\_\_\_\_  
Signature of Person Making Service

\_\_\_\_\_  
Title (if any)

\*Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Judge, Notary, or Other Officer  
Authorized to Administer Oaths

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

ENDORSED  
FILED IN MY OFFICE THIS

SEP 16 2010

D-202-CV- CV 2010 11025

*Quanita M. Duran*  
CLERK DISTRICT COURT

Kendyl Medina, by her mother Audrey Estrada  
PLAINTIFF

VS

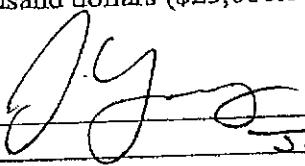
Albuquerque Public Schools, Amanda & Larissa Dimas, et al.  
DEFENDANT

COURT-ANNEXED ARBITRATION CERTIFICATION

(Party and Attorney) Law Office of Assed & Associates (John Young)  
pursuant to Second Judicial District Court Local Rule 2-603, certifies as follows:

This party seeks only money judgment and the amount sought does not exceed twenty-five thousand dollars (\$25,000.00) exclusive of punitive damages, interest, costs and attorney fees.

This party seeks relief other than a money judgment and/or seeks relief in excess of twenty-five thousand dollars (\$25,000.00) exclusive of punitive damages, interest, costs and attorney fees.

Signature: 

Printed Name: John Young

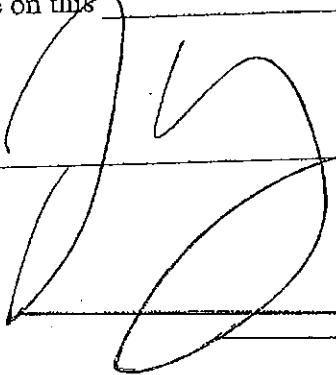
Law Firm: Assed & Associates

Address: 818 5th Street NW

City/Zip: Albuquerque NM 87102

Phone: (505) 246-8373

I hereby certify that an endorsed copy of the foregoing pleadings was mailed or delivered to all parties entitled to notice on this \_\_\_\_\_ day of \_\_\_\_\_

20 \_\_\_\_\_. 

Signature: 